

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CAPITAL FINANCE LOANS, LLC,
APPELLANT**

vs.

**ANDREW READ,
RESPONDENT**

DOCKET NUMBER WD78621

DATE: DECEMBER 15, 2015

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Before Division Three: Joseph M. Ellis, P.J., Karen King Mitchell, J. and Gary D. Witt, J.

Attorneys:

Nicki Cannezzaro, for Appellant

Dale K. Irwin, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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CAPITAL FINANCE LOANS, LLC, APPELLANT

v.

ANDREW READ, RESPONDENT

WD78621

Jackson County, Missouri

Before Division Three Judges: Joseph M. Ellis, P.J., Karen King Mitchell, J. and Gary D. Witt, J.

Capital Finance Loans, LLC filed suit against Andrew Read in the Circuit Court of Jackson County seeking a deficiency judgment against him following the repossession and sale of his pickup truck. Read filed his answer and asserted two counter-claims alleging (1) a violation of the Motor Vehicle Time Sales Act ("MVTSA") with regard to provisions of the original installment contract and (2) violations of the Uniform Commercial Code ("UCC") with regard to the notice sent to him prior to Capital Finance's sale of his repossessed vehicle. Read subsequently filed a motion to dismiss Capital Finance's amended petition, asserting that, because Capital Finance had failed to comply with the provisions in the UCC related to the notice required to be given to him about the sale of the truck, a deficiency judgment against him was precluded. The circuit court entered a Partial Judgment and Order granting Read's motion to dismiss and subsequently certified its partial judgment as final for the purposes of appeal.

DISMISSED and REMANDED.

Division Three holds:

- (1) A trial court's designation of a judgment as final for the purposes of appeal under Rule 74.01(b) is effective only when the order disposes of a distinct "judicial unit." If the judgment that is certified by the circuit court for appeal does not dispose of a distinct judicial unit, this Court does not have jurisdiction to entertain the appeal.
- (2) This rule is applicable to cross-claims or counterclaims arising out of the same set of facts, and the same transactions and occurrences, as the dismissed claims or counts appealed.
- (3) If a counterclaim is compulsory, then it must be disposed of by the trial court before this Court may entertain authority, as it would fall under the same "transactions and occurrences" (or "judicial unit") as the claims sought under the petition.

- (4) Both counterclaims are still pending in this action. Even if Read's second counterclaim could be viewed as a separate judicial unit from the dismissed claims, his first counterclaim cannot. As that counterclaim relates directly to the contract upon which Capital Finance's breach of contract claim is based, it is a mandatory counterclaim and cannot be viewed as a separate judicial unit from the breach of contract claim. Since that counterclaim is still pending, the trial court's partial judgment has clearly not resolved an entire judicial unit and certification of the judgment as final for purposes of appeal was improper.
- (5) Because the partial judgment does not resolve an entire judicial unit and was improperly certified, this Court does not have jurisdiction to entertain the appeal. The appeal is, therefore, dismissed, and the cause is remanded for further proceedings consistent with this opinion.

Opinion by Joseph M. Ellis, Judge

Date: December 15, 2015

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